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Attorneys for Plaintiff and the Proposed Classes,
SUSAN WAKS

FILED
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BROOKLYN OFFICE

WEXLER, J.

LINDSAY, M.J.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

SUSAN WAKS, on behalf of herself and
all others similarly situated,

Plaintiff,

vs.

MRS ASSOCIATES, INC. and
MRS BPO, LLC,

Defendants.

CASE NO.

CV 11 - 0343

**CLASS ACTION COMPLAINT
FOR DAMAGES AND
INJUNCTIVE RELIEF PURSUANT
TO THE TELEPHONE
CONSUMER PROTECTION ACT,
47 U.S.C. § 227 ET SEQ.**

Jury Trial Demanded

Susan Waks ("Plaintiff"), individually and on behalf of all others similarly situated,
allege on personal knowledge, investigation of counsel, and on information and belief as follows:

INTRODUCTION AND NATURE OF ACTION

1. Plaintiff brings this action for statutory damages, injunctive relief and any other available legal or equitable remedies, resulting from the illegal actions of MRS Associates, Inc. and MRS BPO, LLC (together "Defendants"), national collection agencies, in negligently and/or willfully placing calls to Plaintiff on her cellular telephone without her prior express consent and not for emergency purposes (sometimes referred to herein as "Prohibited Calls"), in violation of

the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.*, (“TCPA”).

2. In 1991, Congress enacted the TCPA in an effort to combat the invasion of privacy faced by everyday Americans who received unwanted calls. In relevant part, the TCPA prohibits the use of an automatic telephone dialing system to call any telephone number assigned to a cellular telephone service absent an emergency purpose or the “prior express consent” of the called party. The Federal Communication Commission, the agency empowered to implement the TCPA, mandates that “the burden will be on the creditor to show it obtained the necessary prior express consent.”¹

3. Plaintiff is one such victim of Defendants’ repeated Prohibited Calls. Worst of all, Plaintiff (and others similarly situated) do not even owe the debt at issue, as the calls are intended for a completely different individual. This is a problem faced by a large number of Americans and is summarized in a recent New York Times posting, entitled “*When a Debt Collector Calls for Debt You Don’t Owe*.”²

JURISDICTION AND VENUE

4. This Court has jurisdiction under the Class Action Fairness Act of 2005 because Plaintiff seeks up to \$1,500 in statutory damages for each of the numerous calls that were placed to her cellular phone in violation of the TCPA, which, when aggregated among a proposed class, numbering in the tens of thousands, easily exceeds \$5,000,000 and Plaintiff is a citizen of New York and Defendants are citizens of New Jersey.

¹ *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 23 F.C.C.R. 559 (2008).

² Jennifer Schultz, *When a Debt Collector Calls for Debt You Don’t Owe*, N.Y. Times, Nov. 1, 2010. (Available at, <http://bucks.blogs.nytimes.com/2010/11/01/when-a-debt-collector-calls-for-debt-you-dont-owe/>)

5. Venue is proper in the United States District Court for the Eastern District of New York pursuant to 28 U.S.C. § 1391(b) and 1441(a) because the events giving rise to Plaintiff's claims against Defendants occurred within the State of New York and the Nassau County.

PARTIES

6. Plaintiff is, and at all times mentioned herein was, an individual citizen of the State of New York, and resident of the Nassau County. Plaintiff is, and at all times mentioned herein was, a "person" as defined by 47 U.S.C. § 153(10).

7. Defendant MRS Associates, Inc. was founded in 1991 and is, and at all times mentioned herein was, a national collections agency, whose primary corporate address is in the City of Cherry Hill, County of Camden, State of New Jersey, where Defendant also conducts business. Defendant MRS Associates, Inc.'s primary corporate address is 1930 Olney Ave., Cherry Hill, New Jersey 08003. Defendant MRS Associates, Inc. is owned and operated by Saul Freedman and Jeffrey Freedman, among others. Defendant MRS Associates, Inc. is, and at all times mentioned herein was, a "person," as defined by 47 U.S.C. § 153(10).

8. Defendant MRS BPO, LLC is, and at all times mentioned herein was, a national collections agency, whose primary corporate address is in the City of Cherry Hill, County of Camden, State of New Jersey, where Defendant also conducts business. MRS BPO, LLC's primary corporate address is 1930 Olney Ave., Cherry Hill, New Jersey 08003. Defendant MRS BPO, LLC is managed by Saul Freedman and Jeffrey Freedman, among others. Defendant MRS BPO, LLC is, and at all times mentioned herein was, a "person," as defined by 47 U.S.C. § 153(10).

9. Plaintiff reserves the right to amend the Complaint, including, to add Defendants' clients who compensate Defendants for making Prohibited Calls.

PLAINTIFF'S FACTUAL ALLEGATIONS

10. Plaintiff has received numerous Prohibited Calls to her cellular phone in the past six months from the Defendants.

11. Plaintiff has incurred charges for these Prohibited Calls. The FCC has made clear that “wireless customers are charged for incoming calls whether they pay in advance or after the minutes are used.”³

12. During these Prohibited Calls Defendants used an “automatic telephone dialing system and/or an artificial or prerecorded voice” as prohibited by 47 U.S.C. § 227(b)(1)(A).

13. These calls were for the purpose of collecting debt and were not for emergency purposes as set forth in 47 U.S.C. § 227(b)(1)(A).

14. Plaintiff did not provide “prior express consent” to receive the Prohibited Calls on her cellular telephone as set forth in 47 U.S.C. § 227(b)(1)(A).

15. The Prohibited Calls received by Plaintiff were intended for a person other than the Plaintiff.

16. These Prohibited Calls placed by Defendants were in violation of 47 U.S.C. § 227(b)(1).

CLASS ACTION ALLEGATIONS

17. Plaintiff brings this action on behalf of herself and on behalf of and all others similarly situated (the “Consent Class”), as follows:

³ *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 23 F.C.C.R. 559 (2008).

All persons within the United States to whom Defendant(s) has placed a call to said person's cellular telephone (without their prior express consent and not for emergency purposes) through the use of an automatic telephone dialing system or an artificial or prerecorded voice, within the four years prior to the filing of this Complaint.

18. Plaintiff also brings this action on behalf of herself and on behalf of all others similarly situated (the "Error Subclass"), as follows:

All persons within the United States to whom Defendant(s) has placed a call to said person's cellular telephone (without their prior express consent and not for emergency purposes) through the use of an automatic telephone dialing system or an artificial or prerecorded voice, within the four years prior to the filing of this Complaint, where such person is not the debtor (*i.e.*, not the intended recipient of Defendant's call).

19. Plaintiff also brings this action on behalf of herself and on behalf of all others similarly situated (the "No-Relation Subclass"), as follows:

All persons within the United States to whom Defendant(s) has placed a call to said person's cellular telephone (without their prior express consent and not for emergency purposes) through the use of an automatic telephone dialing system or an artificial or prerecorded voice, within the four years prior to the filing of this Complaint, where such person does not have any debtor-creditor relationship with the

Defendants (*i.e.*, the recipient of Defendant's call is a reference, co-signer, family member of the debtor or the like).

Hereafter, the Consent Class, Error Subclass and No-Relation Subclass are referred to collectively as the "Classes."

20. Defendants, their employees and other agents, the Judge to whom this action is assigned and any members of the Judge's staff, and claims for personal injury, wrongful death and/or emotional distress are excluded from the Classes. Plaintiff reserves the right to expand the class definitions to seek recovery on behalf of additional persons as warranted as facts are learned in further investigation and discovery.

21. Plaintiff does not know the number of members in the Consent Class, Error Subclass and No-Relation Subclass, but believes, based on Defendants' market share and investigation of counsel, that the number is in the tens of thousands, if not substantially higher. Thus, joinder of all Consent Class, Error Subclass or No-Relation Subclass members is impractical due to the size and relatively small value of each member's claim.

22. Indeed, the Internet is replete with discussions between numerous members of the Consent Class, Error Subclass and No-Relation Subclass — all desperate to end Defendants' calls. The following is a sampling, evidencing Defendants' egregious violations of the TCPA, the invasion of privacy suffered by members of the Classes, the numerosity of the class, the commonality of the issues and the typicality of Plaintiff as a class representative:

"SO ANNOYING on October 12, 2009 for 301-882-9961
I have had my cell number for over a year now. I have this number and others asking for people that I have no clue who they are. If I tell them I don't know the people they ask who I am. When I won't tell them, they laugh and say, okay Mrs. ---.. AHH!! Then they want to know my address and other info! WISH THEY'D LEAVE ME ALONE!!"

(Available at, <http://www.callferret.com/mrs-associates.html>)

“Anonymous

06-08-2006, 06:21 AM

MRS Collection Agency has been steadily calling me for months. I have already proven that I am not the same person they are seeking, even though I share the same first and last name. I have checked my credit report to ensure that they are not reporting false info to it. They are not, but continue to call. . . .”

(Available at, <http://www.debtconsolidationcare.com/forums/mrs-associates.html>)

“Anon on October 20, 2009 for 740-205-6856

They called for an old roommate who has been giving my # out to these stupid companies. They wouldn't state who they were. I called back out of curiosity and got a very rude man who when I asked the name of the company-only stated it was MRS and insisted I tell him who I was. “I want to know who you are!” I said no thanks and hung up. Prolly [sic] collections like everyone else said. I am so annoyed by getting all these collection calls for my old roommate when he never had my cell # linked to any of these people. I wish I could make it stop... I work 3rd shift and these calls during my “sleep” time sucks... I'd turn my phone off but my family has emergencies.. bleh.”

(Available at, <http://www.callferret.com/mrs-associates.html>)

“Josh on

December 17, 2009

for 223-987-5001 I got an automated call saying it was a call for and to press 1 if I was that person. I pressed one and then someone answered the phone as if I called them. They said their name, MRS Associates and asked how they could help me. Naturally I said I didn't know since they were the one that had called me. Then she had to look something up on the computer and said she was calling about my Bank of America VISA card. I told her I don't have one (because I don't) and she put me on hold for a second while she looked something up on the computer because it was “frozen.” She then came back with a birth date that was incorrect and I told her so. Then she wanted the last four digits of my SS# so she could remove me from the list. I sharply declined. She got annoyed at my answer and said the calls would continue because I was being “arrogant” and hung up. I am on the do not call registry and have never been behind on any of my bills so they had the wrong person at best or weren't able to scam me at worst.”

(Available at, <http://www.callferret.com/mrs-associates.html>)

“mark on July 30, 2009 for 888-334-5677

got a call on our business phone ,home phone and cell phone looking for a person i have never heard of. While our business phone is not protected by the DNC list, my cell and home are.”

(Available at, <http://www.callferret.com/mrs-associates.html>)

“Tim Tracy

MRS COLLECTIONS COMPANY called me again for a person who does not live here, has never lived here and is not related to us in any way and then when I try to ask who gave them my number and for their name and address, THEY HANG UP ON ME. I have reported this to their quality assurance department only to receive an automatic out of the office reply. Still NO ONE from MRS COLLECTIONS has contacted me to identify where they keep getting my phone number for these other people and why they do not require their employees to do a reverse number search on SUPERPAGES.COM to verify they are not calling someone not involved in their collections. Also, they need to check the do not call registry as well, because they are in violation of the rules by calling me and asking me for money! This company should fire all their employees and be put out of business by the government as they are incompetent and incapable of doing their work correctly."

(Available at, <http://mrs-collections.pissedconsumer.com/mrs-collections-called-again-for-person-not-related-to-nor-living-at-this-address-and-hung-up-on-me-20100701187941.html>)

"Anonymous on February 18, 2009 for 223-987-5001
They called my cell phone several times. Same recorded message (made to sound not like a recorded message, some one with a British accent) each time with no reference to anything specific except to call them "about a very important matter that needs my attention". I called back to see who this was and the call would not go through - says invalid number.
I think this is a scam for money not a collection agency because I do not owe anyone money."

(Available at, <http://www.callferret.com/mrs-associates.html>)

"Bonnie on October 7, 2009 for 301-882-9961
They have been calling nearly daily asking for a person I don't know and have never heard of. How can I get them to stop calling?"

(Available at, <http://www.callferret.com/mrs-associates.html>)

"Pissed
on October 26, 2009
for 202-367-9124
MRS Associates Debt Collectors---They don't even realize it comes up on a Caller ID. Ruthless---Unrelenting. Worse than a Pitbull and don't care That they have a wrong telephone number. They just continually harrass all hours and don't believe you when you tell them it's the WRONG NUMBER!!!!!!."

(Available at, <http://www.callferret.com/mrs-associates.html>)

"John Everhart
"I have had 2 phone calls this week from this MRS Collections, asking for a Shawn Cooper. I explained, the first time, that I have had this phone # for 10 years & my name is not Shawn Cooper nor do I know how to contact him & he has never lived here or had this phone # . The second call came on Sat. morning

Aug.22 @ 9a I had just gotten home @ 6a & been asleep for an hour & a half, now can't get back to sleep . These people need to be stopped from harassing the wrong people."

(Available at, <http://www.complaintsboard.com/complaints/mrs-collections-c245039.html>)

23. The members of the Consent Class, Error Subclass and No-Relation Subclass share well defined, nearly identical, questions of law and fact, which predominate over questions that may affect individual members of the Classes. These common questions of law and fact include:

- a. Whether, within the four years prior to the filing of this Complaint, Defendants have placed any calls (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice to any telephone number assigned to a cellular telephone service.
- b. Whether, within the four years prior to the filing of this Complaint, Defendants have placed any calls to any telephone number assigned to a cellular telephone service (without their prior express consent and not for emergency purposes) through the use of an automatic telephone dialing system or an artificial or prerecorded voice, where such person is not the debtor (i.e., not the intended recipient of Defendants' calls).
- c. Whether, within the four years prior to the filing of this Complaint, Defendants have placed any calls to any telephone number assigned to a cellular telephone service (without their prior express consent and not for emergency purposes) through the use of an automatic telephone dialing system or an artificial or prerecorded voice, where such person does not have any debtor-creditor relationship with the Defendants or the Defendants' clients (i.e., the recipient of Defendants' call is a reference, co-signer, family member of the debtor or the like).

d. Whether Defendants' can meet their burden of proving that they had obtained prior express consent for such calls to members of the Classes.

e. Whether Defendants should be enjoined from placing such calls in the future.

24. The Class is ascertainable and can be identified through Defendants' records.

25. Plaintiff and members of the Classes are entitled to statutory damages as provided for under the TCPA.

26. As a person that received numerous calls using an automatic telephone dialing system or an artificial or prerecorded voice: (1) without Plaintiff's prior express consent; (2) as a person who is not even the intended recipient of Defendants' calls; and (3) as a person who does not have a debtor-creditor relationship with Defendants or Defendants' clients, Plaintiff is asserting claims that are typical of the Consent Class, Error Subclass and No-Relation Subclass.

27. Plaintiff will fairly and adequately represent and protect the interests of the Consent Class, Error Subclass and No-Relation Subclass in that Plaintiff has no interests antagonistic to any member of the Classes.

28. Plaintiff and the members of the Classes have all suffered harm as a result of the Defendants' unlawful and wrongful conduct. Absent a class action, members of the Classes will continue to face the potential for irreparable harm. In addition, these violations of law will be allowed to proceed without remedy and Defendants will likely continue such illegal conduct. Class-wide damages are essential to induce Defendants to comply with federal law.

29. Because of the size of the individual class member's claims, few, if any, class members could afford to seek legal redress for the wrongs complained of herein.

30. Plaintiff has retained counsel experienced in handling class action claims and claims involving violations of the TCPA.

31. A class action is a superior method for the fair and efficient adjudication of this controversy.

32. Defendants have acted on grounds generally applicable to the Classes and evidence of Defendants' TCPA violations can be determined on a class-wide basis.

FIRST CLAIM

(NEGLIGENT VIOLATIONS OF THE TCPA)

33. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

34. The forgoing acts and omissions of Defendants constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 *et seq.*

35. As a result of Defendants' negligent violations of 47 U.S.C. § 227 *et seq.*, Plaintiff and each of the members of the Classes are entitled to statutory damages of \$500 for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

36. Plaintiff and the members of the Classes are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CLAIM

(KNOWING AND/OR WILLFUL VIOLATIONS OF THE TCPA)

37. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

38. The foregoing acts and omissions of Defendants constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 *et seq.*

39. As a result of Defendants' knowing and/or willful violations of 47 U.S.C. § 227 *et seq.*, Plaintiff and each of the members of the Classes are entitled to treble damages, as provided

by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

40. Plaintiff and the members of the Classes are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

41. WHEREFORE, Plaintiff respectfully requests the Court grant Plaintiff and the members of the Classes the following relief against Defendants:


- a. An Order, pursuant to Federal Rules of Civil Procedure 23(c) and (g), certifying the proposed Consent Class, Error Subclass and No-Relation Subclass (defined herein) and appointing Plaintiff's undersigned counsel of record to represent the Consent Class, Error Subclass and No-Relation Subclass.
- b. An Order issuing an injunction, pursuant to 47 U.S.C. § 227(b)(3)(A), enjoining Defendants from placing any further Prohibited Calls to members of the Classes and complying with the TCPA.
- c. As a result of Defendants' negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each member of the Classes \$500 in statutory damages, for each and every violation (each Prohibited Call), pursuant to 47 U.S.C. § 227(b)(3)(B).
- d. As a result of Defendants' willful and/or knowing violation of 47 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each member of the Classes treble damages, as provided by statute, up to \$1,500 for each and every violation (each Prohibited Call), pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).
- e. An award of attorneys' fees and costs to counsel.
- f. Such other relief as the Court deems just and proper.

TRIAL BY JURY

42. Plaintiff demands a jury trial on all claims.

THE MATHEWS LAW GROUP

Dated: *January 19, 2011*


By:
Charles T. Mathews,
Attorney for Plaintiff Susan Waks
and the Proposed Classes